

**UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

THERMOLIFE INTERNATIONAL, LLC,

Plaintiff,

v.

HUMAN POWER OF N COMPANY,

Defendant.

HUMAN POWER OF N COMPANY,

Plaintiff,

v.

THERMOLIFE INTERNATIONAL, LLC,

Defendant.

No. WA: 6:21-CV-00144-ADA [Lead Case]

JURY TRIAL DEMANDED

No. WA: 6:22-CV-00179-ADA

JURY TRIAL DEMANDED

**ORDER GRANTING JOINT MOTION TO CONSOLIDATE CASES
AND CONSOLIDATED SCHEDULING ORDER**

This Court, having considered the Parties' Joint Motion to Consolidate Cases (the "Motion"), hereby GRANTS the Motion and ORDERS the following:

Civil Action No. 6:22-CV-00179-ADA is hereby consolidated with Civil Action No. 6:21-CV-00144-ADA for all purposes including trial. The court further VACATES the previous Scheduling Order (Dkt. 51) and the Parties' Joint Notice of Amended Case Schedule (Dkt. 115) in Civil Action No. 6:21-CV-00144-ADA (now the lead case) and ORDERS the following case schedule for the consolidated cases:

Deadline	Item
May 12, 2022	Plaintiff files response to HumanN's Second Amended Answer in the first case
May 12, 2022	Plaintiff files response to HumanN's declaratory judgment complaint in second action
May 12, 2022	Plaintiff serves preliminary ¹ infringement contentions for the '813 and '747 patents in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (i.e. the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
June 1, 2022	Defendant serves preliminary invalidity contentions for the '813 and '747 patent in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
June 7, 2022	Parties exchange claim terms from the '813 and '747 patents for construction.
June 14, 2022	Parties exchange proposed claim constructions for the '813 and '747 patents and extrinsic evidence in support thereof. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall also provide a summary of the witness's expected testimony including the opinions to be expressed and a general description of the basis and reasons therefore. A failure to summarize the potential expert testimony in a good faith, informative fashion may result in the exclusion of the proffered testimony. With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

Deadline	Item
June 16, 2022	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions for the '813 and '747 patents.
June 28, 2022	Defendant files Opening claim construction briefs on the '813 and '747 patents, including any arguments that any claim terms are indefinite.
July 14, 2022	Plaintiff files Responsive claim construction briefs '813 and '747 patents.
July 28, 2022	Defendant files Reply claim construction briefs '813 and '747 patents.
July 28, 2022	Parties jointly email the law clerks to confirm their <i>Markman</i> date and to notify if any venue or jurisdictional motions remain unripe for resolution.
August 4, 2022	Plaintiff files Sur-Reply claim construction brief '813 and '747 patents.
August 9, 2022	Parties submit Joint Claim Construction Statement for the '813 and '747 patents and email the law clerks an editable copy.
August 9, 2022	Parties submit optional technical tutorials for the '813 and '747 patents.
August 17, 2022 at 2:00 p.m.	Markman Hearing on the disputed terms of the '813 and '747 patents.
September 1, 2022	Deadline to serve Final Infringement and Invalidity Contentions on the '813 and '747 patents. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.
August 25, 2022	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims.
August 25, 2022	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue for the '813 and '747 patents. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
September 15, 2022	Close of Fact Discovery.
September 22, 2022	Opening Expert Reports.
October 20, 2022	Rebuttal Expert Reports.
November 8, 2022	Close of Expert Discovery.
November 10, 2022	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a

Deadline	Item
	Joint Report within 5 business days regarding the results of the meet and confer.
November 22, 2022	Dispositive motion deadline and <i>Daubert</i> motion deadline.
December 6, 2022	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
December 20, 2022	Serve objections to pretrial disclosures/rebuttal disclosures.
January 10, 2023	Serve objections to rebuttal disclosures and file Motions <i>in limine</i> .
January 17, 2023	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i>
January 24, 2023	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
8 weeks before trial	Parties jointly email the Court's law clerk to confirm their pretrial conference and trial dates.
3 business days before Final Pretrial Conference.	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
February 7, 2023 [subject to Court availability]	Final Pretrial Conference.
March 6, 2023 [subject to Court availability]	Jury Selection/Trial.

SIGNED this 27th day of April, 2022.


 ALAN D. ALBRIGHT
 UNITED STATES DISTRICT JUDGE